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83 - 1667

FILE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT A. WILLIAMS,
DAVID R. WILLIAMS,
THOMAS RICHARD WILLIAMS
and BOYD WILLIAMS,

Petitioners

v.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ROGER LEE EDWARDS
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17 pp

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit reversing the order of the Honorable Woodrow W. Jones, Chief Judge, dismissing a second conspiracy indictment brought by the Government against Petitioners.

QUESTION PRESENTED

Whether or not the double jeopardy clause of the Constitution is violated when the United States Attorney, after the declaration of a mistrial in a conspiracy case, without dismissing the first indictment, secures a second indictment for the same crime alleging facts learned from the first trial which make the defense presented at the first trial the substance of the conspiracy charged in the second indictment?

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TABLE OF AUTHORITIES

PARTIES TO THE PROCEEDING BELOW

United States of America

Robert A. Williams

David R. Williams

Thomas Richard Williams

Boyd Williams

(No. 83-5099)

OPINIONS BELOW

The judgment of the Fourth Circuit Court of Appeals sought to be reviewed was entered on December 30, 1983, and a Petition for Rehearing was denied on January 30, 1984. A copy of the Opinion and Order denying a rehearing are contained in the appendix attached hereto.

JURISDICTION

Jurisdiction of the United States Supreme Court is invoked pursuant to Title 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Statute involved: If two or more persons conspire to commit an offense

against the United States, or agency thereof in any manner or for any purpose, and one or more of said persons do any act to effect the object of the conspiracy, each shall be fined not more than TEN THOUSAND DOLLARS ($10,000.00) or imprisoned not more than five years, or both. Title 18 U.S.C. 371.

Constitional provision involved: No person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury, except in cases that arise in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation. U.S. Const.

amend. V. Other than the statute and constitutional provisions set out above, the case involves the interpretation of case law.

STATEMENT OF THE CASE

As a result of federal charges for possession of mourning doves in excess of the daily bag limit, a hearing was scheduled before the United States Magistrate in Asheville, North Carolina. On December 2, 1982, the four defendants attended a preliminary hearing before the Magistrate and one of the defendants, Thomas Richard Williams, testified on cross-examination that he had a hunting license issued prior to the State of North Carolina's Game Warden approaching him. This statement was not true. Otherwise the defendants testified that all three had been hunting on the day in question and that they each killed approximately ten (10) birds.

As a consequence, Petitioners were charged in a five (5) count bill of indictment filed January 4, 1983, with conspiracy

to commit perjury (all four defendants 18 U.S.C. 371); perjury (Robert A. Williams and Thomas Richard Williams 18 U.S.C. 1623 (A)); using a document knowing the same to contain false declarations (Thomas Richard Williams 18 U.S.C. 1623 (A)); and subornation of perjury (Robert A. Williams 18 U.S.C. 1623 (A)).

At a trial on the merits Robert A. Williams was found not guilty of perjury. The subornation of perjury against Robert A. Williams was dismissed. One perjury count against Thomas Richard Williams was dismissed and he was found guilty of one count by the jury. The jury was unable to reach a unanimous verdict on the conspiracy count and a mistrial was declared on March 10, 1983.

On March 11, 1983, the United States Attorney sought and secured a second indictment from the Grand Jury for conspiracy. The second indictment alleged facts the United States Attorney admitted that he learned from the first trial.

The second indictment alleged an open-ended conspiracy through the present date. The substance of the second indictment was to make the defense offered by the defendants at the first trial the alleged conspiracy. The first indictment remains outstanding.

The defendants moved to dismiss on the ground that the second indictment violated their constitutional protection against double jeopardy and on other grounds. The matter came on for hearing in Asheville, North Carolina, on April 27, 1983, before the Honorable Woodrow W. Jones, Chief Judge. The defendants' motion to dismiss on double jeopardy grounds was granted by the Court.

The Government appealed. The Fourth Circuit Court of Appeals reversed an opinion contained in the appendix attached hereto.

REASONS FOR GRANTING THE PETITION

The case below and other decisions present an apparent conflict of authority in the

decisions from our Circuit Courts of Appeals. In DeMarrias v. United States, 487 F. 2d 19 (8th Cir., 1973); United States v. Stricklin, 591 F. 2d 1112 (5th Cir., 1979); United States v. Grabinski, 674 F. 2d 677 (8th Cir., 1982) the Court held that the Government may bring two indictments so long as jeopardy has not attached to either indictment. In United States v. Cerilli, 558 F. 2d 697 (3rd Cir., 1977) the Court held the Government could bring a second indictment after jeopardy had attached to the first indictment.

Petitioners also contend that the decision of the Fourth Circuit Court of Appeals is a very important question of Federal law which should be settled by the United States Supreme Court. The actions of the United States Attorney strike at the very heart of our constitutional protection against double jeopardy. Allowing the decision of the Fourth Circuit Court of Appeals to stand will allow a prosecutor after the declaration of a mistrial for

whatever reason to return to the Grand Jury and secure a second indictment which in effect would make the defense presented the crime alleged in the conspiracy. A statement from this Court is particularly applicable to this case.

> "The underlying idea, one that is deeply ingrained, in at least the Anglo-American system of jurisprudence, is that the state with all its resources should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal in compelling him to live in a continuous state of anxiety and insecurity as well as enhancing the possibility that even though innocent he may be found guilty." Greene v. United States, 355 U.S. 184 (1957).

Petitioners urge that the holding of the Fourth Circuit conflicts with the policies laid down in Greene v. United States, supra.

It is well settled that jeopardy attaches when the jury is sworn and impaneled. United States v. Martin Linen Supply Company, 430 U.S. 546 (1977); Illinois v. Somerville, 410 U.S. 458 (1973). In this case the jury was sworn, impaneled, and the trial was conducted. Clearly, jeopardy attached to the first

indictment filed on January 4, 1983. Demarrias, Stricklin, and Grabinski from the Fifth and Eighth Circuits Courts of Appeal all stand for the proposition that the Government may not bring a second indictment when jeopardy has attached to the first indictment.

On March 11, 1983, the United States Attorney sought and secured a second indictment alleging a conspiracy based on the same set of circumstances. The second indictment considerably broadened this scope of the alleged conspiracy. In fact, the second indictment so expands the scope of the alleged conspiracy that it now includes the defendants' exercise of their constitutional trial by jury at the first trial. The second indictment also contained factual allegations the United States Attorney admits he learned from the first trial. The new factual allegations of conspiracy by the United States Attorney are the very heart of the defense offered by the defendants at the first trial. The United

States Attorney is attempting to eliminate the defense presented at the first trial by the second indictment. If the second indictment is allowed to stand, defendants are faced with a Hobson's choice. If they offer the same defense presented at the first trial they will, in effect be proving the case alleged by the Government. Defendants would be unable to offer any other defense without facing further charges for perjury. The only other alternative left for the defendants would be to stand silent at a second trial under the second indictment and face almost certain conviction.

In United States v. Cerilli, supra, the Court held that the Government may proceed with a second indictment after the declaration of a mistrial. The defendant in Cerilli requested a mistrial after a juror became sick. The Government sought and secured a new indictment which named an additional defendant and six additional substantive counts against the defendant Cerilli. The

admitted purpose of the second indictment was to counter certain evidentiary rulings made by the Court at the first trial. The additional substantive counts were added in order to allow prosecution to show evidence of similar acts of alleged corruption. The critical point in Cerilli is, however, that the second indictment charged the identical conspiracy as the first indictment. The second indictment in this case contains no new charges or defendants. The Government does not contend that the new indictment is necessary to show similar acts of alleged wrong doing or is in a practical way needed to consolidate new charges or defendants into one proceeding.

Petitioners do not contend that a second trial under the first indictment would violate the double jeopardy clause of the Constitution. Petitioners are also aware that the Government is now familiar with their defense. Petitioners fully expect that this familiarity the Government will

attempt to use to its advantage at a second trial. The crucial point, however, in this case is that the United States Attorney is attempting to take the defense offered by the defendants to the conspiracy charge and make this into the crime alleged. Allowing the decision of the Fourth Circuit Court of Appeals to stand would so significantly erode the double jeopardy clause of the Fifth Amendment to the United States Constitution as to make it practically meaningless. Petitioners respectfully contend that this Court should not allow that to happen.

CONCLUSION

For the reasons and authorities cited herein Petitioners respectfully urge this Court to grant a Writ of Certiorari to review and hear argument on the holding of the Fourth Circuit Court of Appeals.

Respectfully submitted this 11th day of April, 1984.

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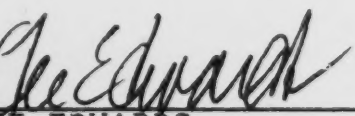
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing Petition upon the Solicitor General of the United States and the United States Attorney by depositing the same in the United States mail postage prepaid and properly addressed to:

Solicitor General of the United States
Room #5614
Department of Justice
Washington, D.C. 20530

Charles R. Brewer
United States Attorney
P.O. Box 132
Asheville, N.C. 28802

This the 11th day of April, 1984.



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APPENDIX

UNPUBLISHED

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 83-5099

United States of America,

Appellant,

vs.

Robert A. Williams,
David R. Williams,
Thomas Richard Williams, aka
Tommy Williams, and
Boyd Williams,

Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Woodrow W. Jones, District Judge. (CR 83-35)

Argued: November 4, 1983

Decided: December 30, 1983

Before MURNAGHAN, SPROUSE and CHAPMAN, Circuit Judges

Charles R. Brewer, United States Attorney for Appellant; Roger Lee Edwards; Harold J. Bender (F. Donald Bridges; Fred A. Flowers on brief) for Appellees.

PER CURIAM:

The four defendants were charged in an indictment returned January 4, 1983, with conspiracy (Count One)"...to procure and offer under oath in Federal Court false material declarations and to produce and offer under oath in Federal Court a materially false North Carolina hunting license knowing the same to contain false material declarations, in violation of Title 18, United States Code, Section 1623." Thomas Richard Williams was charged with two counts of perjury (Counts Two and Three), and Robert A. Williams was charged with perjury (Count Five) and with unlawfully procuring the perjury of Thomas Richard Williams (Count Four). During the jury trial Counts Three and Four were dismissed by the government; the jury found Thomas Richard Williams guilty on Count Two, and Robert A. Williams not guilty on Count Five. However, it could not reach a verdict as to any of the defendants cn Count One and a

mistrial was declared. On March 11, 1983, the day following the mistrial, the government obtained a superseding bill of indictment charging all defendants with conspiracy only. The new indictment involved the same facts alleged in Count One of the original indictment, but contained certain additional overt acts.

Claiming that the new indictment, without the dismissal of the prior indictment, subjects the defendants to double jeopardy, the defendants moved to dismiss the superseding indictment. The district court granted the motion to dismiss relying primarily upon certain language contained in United States v. Grabinski, 674 F. 2d 677 (8th Cir. 1982). Since we find United States v. Grabinski inapplicable to the present facts and United States v. Cerilli, 558 F. 2d 697 (3rd Cir. 1977), cert denied 434 U.S. 966 (1977), much more persuasive, we reverse and remand for a new trial.

There is no claim of prosecutorial vindictiveness in obtaining the superseding indictment. It is not contended that the government may proceed to a new trial under both indictments, and all agree that retrial of a criminal charge is not double jeopardy when the first trial ended in a mistrial because the jury could not agree. The questions then is whether the court may proceed to trial on the superseding indictment without dismissing the original indictment. We find that it may do so.

Grabinski was indicted in the Eastern District of Missouri for failure to file a federal income tax return for 1967. He moved to change the venue to the District of Minnesota claiming to be a resident of St. Paul. The district court originally denied the motion, but later sua sponte dismissed the indictment without prejudice for lack of jurisdiction. The government then filed an information in the District of Minnesota charging Grabinski with failure to file income

tax returns for 1967 and 1976. There was a motion to dismiss claiming double jeopardy and it was appealed after an adverse ruling. The Eighth Circuit affirmed and found that jeopardy had not attached under the first indictment. The court stated:

> This court has explicitly held that the government may obtain a second indictment prior to dismissal of the prior indictment "so long as jeopardy had not attached to any one of those indictments."

674 F. 2d at 680.

The district court in the present case found the above quotation meant that the superseding indictment could not stand because the defendants had been put in jeopardy in the first trial under the first indictment and therefore the court dismissed the superseding indictment.

Double jeopardy does not prevent the retrial of a criminal case when the first trial ended in a mistrial because the jury could not agree. Arizona v. Washington, 434 U.S. 497 (1978). In Cerilli the mistrial resulted from the defendants' request after

one of the jurors became ill. After the mistrial a superseding indictment was obtained and it charged the same conspiracy, but named a new defendant and listed six additional substantive counts. One admitted purpose for the second indictment was to counter court rulings in the original trial that had excluded evidence of similar acts of alleged corruption on the part of the defendant. After deciding that an appeal from a double jeopardy ruling was proper because it was a "collateral order", the court stated:

> We recognize that this case is somewhat unusual because there are two outstanding indictments. Ordinarily, the prosecution would proceed under the original indictment, if it retains validity, or else would secure another indictment. Nonetheless, it has long been settled that the Double Jeopardy Clause is not abridged where there are two pending indictments, setting forth largely identical charges, against the same defendants.[8] Only where the government attempts to proceed to trial on both indictments does the double jeopardy protection come into play. In the present context, however, there is no indication that the prosecution plans to move against the defendants on both indictments. Accordingly, the Double Jeopardy Clause

> does not preclude further proceedings against the defendants, even under the "superseding" indictment that has been returned against them.

558 F. 2d at 701. (Footnote 8 in Cerilli contains opinions from the Fifth, Eighth, Ninth, Tenth Circuits and the District of Maine.)

Why the United States Attorney preferred to go to trial on the superseding indictment without dismissing the original indictment is not our concern, since there is no contention that he may proceed to trial on both indictments. A prosecutor may, following mistrial, reformulate the charges in a new indictment to increase the chance of conviction, so long as the reformulation does not increase the severity of the charges. United States v. Motley, 655 F. 2d 186 (9th Cir. 1981). Defendants contend that the new indictment contains information that the government learned during the trial of the case, but a review of the superseding indictment reveals no mention of a case tried

on March 8, 1983, which ended in a mistrial. Thus the defendants cannot claim that they are being penalized or their rights to due process impaired by going to trial on the original indictment.

REVERSED AND REMANDED
FOR A NEW TRIAL

FILED
Jan 30 1984
U.S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 83-5099

United States of America,

Appellant,

versus

Robert A. Williams,
David R. Williams,
Thomas Richard Williams, aka
Tommy Williams, and
Boyd Williams,

Appellees.

O R D E R

Upon consideration of the appellees' petition for rehearing, by counsel,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Chapman with the concurrences of Judge Murnaghan and Judge Sprouse.

For the Court,

/s/ William K. Slate,II
CLERK

No. 83-1667

In the Supreme Court of the United States

OCTOBER TERM, 1984

ROBERT A. WILLIAMS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
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Washington, D.C. 20530
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TABLE OF AUTHORITIES

In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 83-1667

ROBERT A. WILLIAMS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that a retrial upon a superseding indictment returned after a jury was unable to reach a verdict on the first indictment would violate the Double Jeopardy Clause.

1. On January 4, 1983, petitioners were indicted on a five-count indictment charging conspiracy to procure false statements under oath in federal court and to produce and offer under oath in federal court a materially false North Carolina hunting license knowing it to be false, in violation of 18 U.S.C. 371 (Count One). Thomas Williams and Robert Williams were also charged on several counts of making a false declaration under oath, in violation of 18 U.S.C. 1623 (Counts Two through Five). Following a jury trial in the United States District Court for the Western District of North Carolina, Thomas Williams was convicted on one count of making a false declaration (Count

Two) and Robert Williams was acquitted of making a false declaration (Count Five). Pet. App. 2A.[1] The jury was unable to reach a verdict on the conspiracy charge, however, and the district court declared a mistrial (*id.* at 2A-3A).

On the following day, March 11, 1983, the grand jury returned a superseding indictment charging one count of conspiracy. The new indictment included the same facts alleged in Count One of the original indictment, but it omitted some erroneous facts regarding the issuance of summonses and added some additional overt acts. The district court granted petitioners' motion to dismiss the superseding indictment on the theory that it would violate double jeopardy to try them on that indictment because it was returned without dismissing the original indictment, on which jeopardy had attached. *Id.* at 3A. The court of appeals reversed (*id.* at 1A-8A).

The evidence at trial showed that on September 4, 1982, the first day of the North Carolina hunting season for mourning doves, petitioners Robert Williams, David Williams and Thomas Williams went hunting and killed a total of 30 doves (Tr. 4, 9, 23, 27).[2] Thomas Williams did not have a hunting license (Tr. 8, 10, 11), and the daily legal limit per hunting license at the time was 12 doves (Tr. 77). At approximately 6:35 p.m., officers of the North Carolina Wildlife Resources Commission stopped to check petitioners' liceneses and weapons (Tr. 6). Thomas Williams told the officers that he had not been hunting and did not have a license (Tr. 8, 10, 11). Robert Williams claimed "most" of the doves, and David Williams acknowledged the remainder

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[1]On the government's motion, Counts Three and Four were dismissed during trial (Pet. App. 2A).

[2]Mourning doves are migratory game birds, the possession of which is regulated by federal law. See 16 U.S.C. 703; 50 C.F.R. 20.34.

as his (Tr. 112). Robert and David Williams later were charged with aiding and abetting possession of mourning doves in excess of the daily bag limit (Tr. 88, 112).

Once the officers departed, Thomas Williams went to consult his uncle, petitioner Boyd Williams. The two visited Gerald Silvers, who owned and operated a local store that sold hunting licenses. Tr. 28-29. They found Silvers at his home and persuaded him to return to his store and issue Thomas Williams a hunting license back-timed to show issuance prior to the time the officers had investigated the hunting party (Tr. 32-38; GX 9).[3]

At the preliminary hearing on the possession charges against Robert and David Williams, Thomas Williams was called as a witness (Tr. 87). On cross-examination, Thomas Williams produced the falsified license and testified that he had obtained it prior to the hunt but had not displayed it to the officers because he was not asked for it (Tr. 110; GX 9). During the hearing, both David and Robert Williams referred to the hunting license (GX 3, 5, 6). Boyd Williams also addressed the magistrate during the hearing stating: "I'd just like to say that all three of them had valid hunting licenses. They were all three together, and all three stated they were hunting, and the limit would have been thirty-six birds if all three of them killed their limit and they didn't have but thirty birds" (GX 8). All four petitioners knew at the hearing that petitioner Thomas Williams had not possessed a hunting license during the hunt (Tr. 33-34, 113).

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[3]Hunting licenses are numbered in order by time of issuance. Because Silvers had issued a license at 5:00 p.m., the earliest time he could record on the falsified license was 5:15 p.m., which was earlier than the officers checked the licenses but not earlier than petitioners' hunt began (Tr. 33, 34).

3. a. Petitioners contend (Pet. 5-11) that return of a superseding indictment after a hung jury, without dismissal of the original indictment, violates the Double Jeopardy Clause. They do not suggest, however, how any interest protected by the Double Jeopardy Clause is implicated by the procedure followed here. It has never been contended that the government has the right to go to trial on both indictments; the retrial would be solely on the second indictment. Moreover, petitioners do not (and could not) seriously contend that the government could not obtain a superseding indictment if it had dismissed the first indictment after the mistrial.[4] For double jeopardy purposes, there is no reason why this case should be treated any differently simply because the first indictment was not dismissed. Therefore, the court below correctly concluded that the government is permitted to try petitioners on the second indictment. Accord, *United States* v. *Cerilli,* 558 F.2d 697, 701 (3d Cir.), cert. denied, 434 U.S. 966 (1977).

Petitioners suggest that the Court should grant review here because of "an apparent conflict of authority" in the courts of appeals (Pet. 5). This suggestion is completely without merit. The cases relied upon by petitioner are all cases in which the double jeopardy claim was *rejected.* Petitioners apparently rely on the general statement in those cases that the government may bring two indictments so long as jeopardy has not attached to either indictment. We have no quarrel with that statement, as far as it goes.[5] However, there is no reason to think that any of those

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[4]The statements in other cases on which petitioners rely are expressly limited to the situation where the second indictment is obtained "prior to dismissal of [the first] indictment." See, *e.g., United States* v. *Grabinski,* 674 F.2d 677, 680 (8th Cir. 1982).

[5]For example, prior to the termination of the first trial by the declaration of the mistrial, the government could not have attempted to try the defendants on a second indictment.

courts would find a double joepardy problem where, as here, a superseding indictment was obtained after the trial on the first indictment ended in a mistrial. The courts were not considering that question, and it is quite clear that a defendant can be retried after a mistrial without subjecting him to double jeopardy. See *United States* v. *Sanford,* 429 U.S. 14 (1976); *United States* v. *Perez,* 22 U.S. (9 Wheat.) 579, 580 (1824).[6] As the cases petitioners rely upon themselves hold, there is no reason why the retrial cannot be upon a superseding indictment. Hence, petitioners' claim of a conflict is specious.

b. Petitioners also argue (Pet. 8-9) that the superseding indictment impermissibly broadened the scope of the conspiracy and incorporated their trial defense, thus forcing them to expose themselves to perjury charges in order to mount a defense at the second trial. They point to no specifics to support this contention, and it is not apparent from a comparison of the two indictments that there is any factual basis for this claim.[7] In any event, it is clear that

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[6]Of course, this rule does not, as petitioner suggests, "allow a prosecutor after the declaration of a mistrial *for whatever reason* to return to the Grand Jury and secure a second indictment * * *" (Pet. 6-7 (emphasis added)). It is well established that retrial after a mistrial is not permitted where the prosecution deliberately provoked a defendant's motion for a mistrial for tactical reasons or where a mistrial was granted over the defendant's objection in the absence of manifest necessity. See generally *Oregon* v. *Kennedy,* 456 U.S. 667, 672-673 (1982). These restrictions also would apply where the government sought to retry on a superseding indictment, but they are not applicable in this case where the jury was unable to reach a verdict. See *Richardson* v. *United States,* No. 82-2113 (June 29, 1984), slip op. 7.

[7]The essential purpose of the conspiracy charged in both indictments was the same: to exonerate Robert and David Williams from federal charges of unlawful possession of mourning doves. The means of effecting that object was the same in both indictments: the procurement of a materially false North Carolina hunting license issued to Thomas Williams. The only way the superseding indictment differed from the original was in the addition of four overt acts (Nos. Four, Six, Eight and

petitioners do not allege any constitutional violation. At a retrial after mistrial, a prosecutor is permitted to do "what every trial lawyer tries to do: improve his chances of winning on retrial by learning from his mistakes at the original trial. * * * The only 'penalty' [to the defendant] is nothing more than the risk that all litigants run if a case is retried: your adversary may make adjustments in his case based on what he learned at the first trial." *United States* v. *Motley*, 655 F.2d 186, 190-191 (9th Cir. 1981) (footnote omitted).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1984

Nine) and the amendment of Overt Act Seven to correct a factual error, namely, that summonses were issued not when the officers stopped to check licenses but rather sometime later. While these additions may have added detail to the original indictment by specifying additional acts in furtherance of the conspiracy, they added nothing to the basic scope of the conspiracy. Even the more simplified original indictment included what petitioners apparently refer to as their defense, *i.e.*, that they secured the fraudulent hunting license in order to protect Robert and David Williams from the federal charges and Thomas Williams from the state charge of hunting without a license.

DOJ-1984-07